HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P. No. 219 of 1990

Petitioner : Jitendra Kumar Shrivastava

Versus

Respondents : UCO Bank and others

Post for order on 17th April, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 219 of 1990

Petitioner		Jitendra Kumar Shrivastava, aged 33 yrs, S/o Shri Awadhesh Kumar Shrivastava, Clerk, UCO Bank, Trijunction Branch Vaishali Nagar, Bhilai 490023, District – Durg, M.P. (Now C.G.)
	Versus	
Respondents	1.	UCO Bank, through its Chairman & Managing Director, Head Office, 10 Br. Rd. Calcutta.
	2.	General Manager, Personnel, UCO Bank, Head Office, Braboume Road, Calcutta.
	3.	The Government of India, through the Secretary of Ministry of Finance Department & Economic Affair.
Intervener	1.	UCO Bank Scheduled Castes/Scheduled Tribes Employees Council, State Branch Madhya Pradesh through its Regional Secretary – Pramod Kumar Dongre, aged about 33 years, S/o Shri D. V. Dongre, Office at UCO Bank branch office, Civil Centre, Jabalpur.-, H.Qr. at 12, Old Court House Street, 3rd Floor, Calcutta.
	2.	Pradeep Markam, aged about 29 years, S/o Shri B.S.Markam, Clerk, UCO Bank Jawaharganj Branch, Jabalpur.

WRIT PETITION UNDER ARTICLES 226 OF THE COSTITUTION OF INDIA

SB: Hon'ble Mr. Justice **Satish K. Agnihotri**

Shri Ashish Shrivastava, Advocate for the petitioner.

Shri U.N.Awasthy, Senior Advocate with Smt. Raksha Awasthy, Advocate for the respondents No. 1 and 2.

None for the respondent No.3.

None for the Interveners No. 1 and 2.

ORDER

(Passed on this 17th day of April, 2007)

1. By this petition, the petitioner has prayed for a suitable writ or direction to quash the memo dated 26th June, 1989 (Annexure P/2)

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and the examination held on 7.1.1990. It was further prayed that the respondents/authorities be directed to hold the examination, jointly in respect of the General and Reserved categories, together. Subsequently, by amendment allowed as per order dated 6.8.1991, the petitioner prayed for declaring the action points for special recruitment drive for SC/ST (Annexure R/5-C), as being violative of Articles 14 and 16 of the Constitution of India and memo dated 7.2.1989 (Annexure R/6) be also quashed.

2. The indisputable facts in nutshell are that the petitioner was appointed as Clerk on 18.7.1980 in the establishment of the respondent No.1 Bank by the Divisional Manager, UCO Bank, Bhopal. Thereafter, the petitioner was appointed as Advance Ledger Posting Machine Operator (ALPM) in the year 1997 while working as Clerk, on the ground of having basic computer knowledge.

3. In this petition the petitioner challenges the memo dated 26th June, 1989 (Annexure P/2), as stated above, wherein it is provided to hold a separate promotion test for the Clerks belonging to S.C./S.T candidates, for clearing the backlog of unfilled reserved vacancies for SCs/STs, in terms of the Promotion Policy Settlement dated 13.4.1988 on or before 31.8.1989. Detailed guidelines for selection of the candidates as per clause No. 3 of Part-II, Chapter- I of the Promotion Policy Settlement for workmen staff dated 13.4.1988 was published vide memo dated 20th June, 1989 (Annexure P/4).

4. The petitioner, by way of further amendment had challenged a separate promotion test for the clearance of S.C./S.T. Backlog

vacancies, as being violative of Articles 14 and 16 of the Constitution of India.

5. Shri Ashish Shrivastava, learned counsel appearing for the petitioner, would submit that the selection process for reservation of candidates, held on 24.9.1989 is discriminatory as other process meant for all the categories of candidates, in the examination, held on 7.1.1990, is different than the earlier one. In the earlier examination the candidates were permitted to bring pencils, sharpeners, and erasers in the examination hall and in the subsequent examination the candidates were permitted to bring only ball-pen. The minimum qualifying marks for general candidates were different than the same for reserved candidates. The en-block promotion of the S.C./S.T. candidates to clear backlogs would upset the entire roster system, as the promotion of Clerks to the post of Junior Management Grade, Scale-I, provides for filling up of 20% vacancies by direct recruitment, 50% through merit-cum-seniority channel and 30% through seniority channel. In the year of 1989 when the promotions of S.C.and S.T. candidates, by special recruitment drive had taken place, the reservation for S.C. and S.T. had gone more than 50% i.e. 242.26%.

6. Per contra, Shri U. N. Awasthy, learned senior counsel with Smt. Raksha Awasthy, learned counsel appearing for the respondents No. 1 and 2 would submit that the petitioner appeared and failed in the departmental examination held on 24.9.1989. The backlog vacancies, which have accrued for want of eligible candidates in S.C./S.T. categories, is in accordance with the Promotion Policy Settlement. It is wrong to submit that the reservation of S.C. and

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S.T. candidates increased more than 50% criteria in a particular year. It was further contended that the petitioner has no locus standai to challenge the promotion process with respect to the backlog vacancies of the S.C. and S.T. because the petitioner is a general category candidate and he himself has participated in the examination held on 24.9.1989, pursuant to the memo dated 20th June, 1989 (Annexure P/4). The petitioner has not challenged the promotion policy which provides for reservations in case of promotion also from clerical cadre to the officer cadre.

7. The UCo Bank S.C./S.T. Employees Council was permitted to intervene in the matter. Despite notice, none appeared for the Interveners.

8. I have heard learned counsel for the parties and perused the pleadings and documents appended thereto. It is evident that there were 250 vacancies of backlog of SC/ST candidates at the rank of Officers in Junior Management Grade, Scale-I cadre as on 20.6.1986, and as on 26.6.1989 total vacancies arising from non-clearance of backlog was 336. Pursuant to the office memo dated 5th June, 1989 (Annexure R/5), issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training, the respondent Bank initiated action for clearing backlog of reservation for S.C./S.T. The memo dated 5th June, 1989 reads as under :-

"No. 30012/6/88-Estt.(SCT)/SRD II
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
North Block, New Delhi -110001,

Dated, the 5th June, 1989

OFFICE MEMORANDUM

Subject: Special Recruitment Drive for clearing the backlog of reservation for Scheduled Castes/Scheduled Tribes – Filling up of reserved vacancies in the promotion quota.

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Attention is invited to d.o. letters No. 36012/C/88-Estt.(SCT) dated the 9th May, 1989 and No. 36012/6/88-Estt.(SCT) Pt. dated 22nd May, 1989 from Secretary (Personnel) addressed to all Secretaries to the Government of India regarding the Special Recruitment Drive being launched from 1st June, 1989 to clear the backlog of reservation for Scheduled Castes/Scheduled Tribes. This matter was also discussed in the meeting of the Secretaries to the Government of India held under the Chairmanship of MOS (PP) on 29th May, 1989.

2. It has now been decided that simultaneously with the Special Recruitment Drive all out efforts should be made to hold meetings of DPCs for promotion in various grades and posts in accordance with extant instructions so that all vacancies for promotion including the carried forward reservation for SCs and STs are filled expeditiously. While holding the DPCs meeting the existing instructions on associating officers belonging to SC/ST in the DPCs referred to in para 17.4, 17.5 of the Procedure on Reservation for SC/ST in Service (7th Edition) may be scrupulously followed.

3. The progress of action taken in filling up reserved vacancies in the promotion quota may also be incorporated in the progress report to be sent to the Department of Personnel and Training on 31st August, 1989.

(S. K. Parthasarathy)

Joint Secretary to the Government of India."

9. *Thereafter, vide memo dated 10th June, 1989 (Annexure R/5-A) all* the Public Sector Banks and Financial Institutions were directed to clear the backlog of the unfilled reserved vacancies of S.C. and S.T. on or before 31.8.1989. This memo reads as under :-

"No. 101/13/89-SCT (B)
Government of India
Ministry of Finance

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Deptt. of Economic Affairs
(Banking Division)

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Dated the 10th June, 1989

To,

All Public Sector Banks/Financial Institutions.

Subject: Special Recruitment Drive for clearing the backlog of reservations for SCs/STs filling-up of reserved vacancies in the promotion quota.

Sir,

In continuation of this Division's Telex message of even number dated 16.6.1989 on the above cited subject, I am directed to enclose herewith a copy of the OM No. 36012/6/88-Estt. (SCT)-SRD-II dated 5.6.1989 issued by Deptt. of Personnel & Training regarding Special Drive for clearing the backlog of unfilled reserved vacancies for SCs and STs in promotion on or before 31.8.1989.

It is requested that necessary action may please be taken to clear the backlog existing as on 1.1.1989 in promotions. You are further requested to intimate to this Division the details of backlog existing as on 1.11989 and also the steps proposed to be taken to clear the above backlog by 30.6.1989.

Receipt of this letter may please be acknowledged.

Yours faithfully,
(S.P. Bhatia)
Under Secretary to the Govt. of India."

10. The Government of India issued Action Points (Annexure R/5-C), which reads as under :-

"Action Points – meeting of officers of public sector banks and *financial institutions with JS (PRV) to review the progress of Special* recruitment drive for SC/ST held on 6.7.1989.

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1. Bank-wise position of back-log as on 1.1.1989 was reviewed. The figures of back-log as on 1.1.89 will be the base; subsequent vacancies which might arise may be treated as current vacancies;
2. The recruitment of sub-staff would be completed by the banks before 31.7.89.

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3. US(SCT) would prepare a mile-stone chart in bank-wise manner within a week;
4. If the offers of appointment are sent to the selected candidates by the targeted dates, it may be deemed that recruitment has been completed for the purpose of this drive. A list of names of persons selected and the number and date of appointment letter may be maintained;
5. No exclusive date for promotion is contemplated. Promotion exercise may be expedited if they are due, but they are to continue according to the existing rules and instructions. There is no special relaxation for promotion;
6. For the back-log clearance drive, the ceiling of 50% on reservation does not apply; the ceiling of 1.5% on the manpower strength could be relaxed depending on the merits of case of each bank, subject to future adjustments in creation of posts;
7. All covers/correspondence in regard to this drive may be superscribed as "Special Drive for Recruitment of SC/ST";
8. Fortnightly report regarding the recruitment of sub-staff should be submitted by the banks regularly alongwith the action taken from time to time. The bank-wise position would be compiled on the computer in the Division;
9. If the Employment Exchanges do not send the names within a week, banks may advertise and recruit sub-staff in SC/ST category."

11. The petitioner has challenged the Action Points also, after filing of the return by the respondents No. 1 and 2, by way of amendment, which was allowed by this Court.

12. The respondents No. 1 and 2, in compliance of the memos passed by the Govt. of India, notified backlogs of existing vacancies and decided to hold separate promotion test for clearing of the S.C. and S.T. backlog vide 26th June, 1989 (Annexure P/2). The respondents/Bank issued one more circular before that on 20th June, 1989 (Annexure P/4) for promotion of the clerical staff to the

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post of Junior Management Grade, Scale-I. The examinations were accordingly held.

13. This Court vide order dated 2.2.1990, initially stayed the issue of the appointment orders to the successful candidates. Thereafter, vide order dated 2.5.1990, the order dated 2.2.1990 was modified to the extent that the respondents may issue appointment orders in respect of the 80 successful candidates only. Thereafter, on 6.8.1991 this Court passed the interim order that 'In supersession of all previous orders of this Court, the order of stay is modified to the extent that one post in the Scale of Junior Management shall be kept vacant and the rest of vacancies be filled in subject to the decision of this petition. Thus, it appears that all the vacancies could not be filled up pursuant to the examinations held in 1989.

14. The contention of the petitioner that if all the backlog of vacancies in S.C. and S.T. categories for promotion is filled up, the reservation may be up to 240%, is not correct on the facts. The reservation has to be seen on the basis of the total seats available in a particular year. The vacancies arose on earlier point of time which could not be filled up, thus that vacancies could not be added. The total strength in 1989 alone does not make it excessive reservation.

15. The petitioner has not elected to challenge either the promotion policy or the memo dated 5th June, 1989 (Annexure R/5), which provides for clearance of backlog.

16. The contention of the petitioner to the effect that in one examination pencils, sharpeners, and erasers were allowed to be taken in the

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examination hall and in the subsequent examination the same was not permitted to be taken in examination hall, is baseless, as it depends upon the experience in the past examination, to issue instructions in subsequent examination, in order to avoid manipulation etc. in the examination. On this ground alone selection process cannot be quashed.

17. A constitutional Bench of Hon'ble the Supreme Court in **M. Nagaraj & Ors. V. Union of India & Ors.** (AIR 2007 S.C. 71) in para 117 has held as under:-

> "117. As stated above, Article 14 enables classification. A classification must be founded on intelligible differential which distinguishes those that are grouped together from others. The differential must have a rational relation to the object sought to be achieved by the law under challenge. In Indra Sawhney[5] an opinion was expressed by this Court vide para 802 that there is no constitutional or legal bar to making of classification. Article 16(4B) is also an enabling provision. It seeks to make classification on the basis of the differential between current vacancies and carry-forward vacancies. In the case of Article 16(4B) we must keep in mind that following the judgment in R.K.Sabharwal[8] the concept of post-based roster is introduced. Consequently, specific slots for OBC, SC and ST as well as GC have to be maintained in the roster. For want of candidate in a particular category the post may remain unfilled. Nonetheless, that slot has to be filled only by the specified category. Therefore, by Article 16(4B) a classification is made between current vacancies on one hand and carry-forward/backlog vacancies on the other hand. Article 16(4B) is a direct consequence of the judgment of this court in R.K.Sabharwal[8] by which the concept of post-based roster is introduced. Therefore, in our view Articles 16(4A) and 16(4B) form a composite part of the scheme envisaged. Therefore, in our view Articles 16(4), 16(4A) and 16 (4B) together form part of the same scheme. As stated above, Articles 16(4A) and 16(4B) are both inspired by

observations of the Supreme Court in Indra Sawhney[5] and R.K.Sabharwal[8]. They have nexus with Articles 17 and 46 of the Constitution. Therefore, we uphold the classification envisaged by Articles 16(4A) and 16(4B). The impugned constitutional amendments, therefore, do not obliterate equality."

18. The Hon'ble Supreme Court in **M. Venkateswarlu & others Vs. Govt. of A.P. and others** {(1996) 5 SCC167}, held that indisputably it is constitutional obligation to fill up backlog vacancies on account of non-availability of S.C./S.T. candidates. The test of justice and equity envisages that the relaxation be given to a class of person or to an individual.

19. The Hon'ble Supreme Court in **Post Graduate Institute of Medical Education & Research, Chandigarh and others Vs. K. L. Narasimhan and another** { (1997) 6 SCC 283} in para 20, has held as under:-

"20. .....There is no prohibition on filling up backlog vacancies by special recruitment. The special recruitment is not treated as routine recruitment in any year. The bar of 50% would apply only when general recruitment is made on both to the general as well as the reserved candidates in respect of the current vacancies. But when special recruitment is made for selection and appointment of the Dalits and Tribes, to the reserved backlog vacancies, the normal run for recruitment is inapplicable. Accordingly instead of conducting the exams for different categories in the manner indicated above, there is no constitutional prohibition on filling up of the backlog vacancies by a special recruitment in a single go. Thus we hold that the special recruitment is not violative of the principle of carry forward within one year, equally, reservation within 50% quota is not violative....."

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20. The observations with regard to equity in admission, as held by the Hon'ble Supreme Court in the matter of **Post Graduate Institute of Medical Education & Research, Chandigarh and others** (supra), has been overruled in the case of **Dr Preeti Srivastava and another Vs. State of M.P. and others** { (1999) 7 SCC 120 } by a Constitutional Bench of the Hon'ble Supreme Court. However, the finding of the Hon'ble Supreme Court, as stated above, does not stand overruled in the case of **Dr Preeti Srivastava and another**(supra) or thereafter.

21. Recently in the case of **M. Nagaraj & Ors.**(supra) the Hon'ble Supreme Court, in para 100, observed as under :-

> "100. As stated above, Article 16 (4-B) lifts the 50% cap on carry-over vacancies (backlog vacancies). The ceiling limit of 50% on current vacancies continues to remain. In working out the carry-forward rule, two factors are required to be kept in mind, namely, unfilled vacancies and the time factor. This position needs to be explained. On one hand of the spectrum, we have unfilled vacancies; on the other hand, we have a time spread over a number of years over which unfilled vacancies are sought to be carried over. These two are alternating factors and, therefore, if the ceiling limit on the carry over of unfilled vacancies is removed, the other alternative time factor comes in and in that event, the time-scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale is not kept then posts will continue to remain vacant for years, which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the time-cap depending upon the fact situation. What is stated hereinabove is borne out by the service rules in some of the States where the carry-over rule does not extend beyond three years."

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22. It is clear from the dicta laid down by the Hon'ble Supreme Court in various cases, cited above, that carry-forward principle can be adopted for a limited period, for 2 to 3 years, not forever, to disturb the reservation in the cadre. In the present case it is not clear asto whether all seats, as notified were filed up. The matter relates to the examination held in the year 1989. After a period of about 17 years, the individual persons, who may directly be affected by the decision of this Court, have not been impleaded as necessary parties. For that reason also this matter deserves to be dismissed.

23. The petitioner has not challenged the validity of the promotion policy *i.e. memo dated 5th June, 1989, whereby the respondents/Bank* were directed to take special recruitment drive for clearing backlog of SC/ST for filling up of the vacancies in the reserved quota. Thus, the said office memorandum cannot be quashed in absence of challenge to the same. All the actions taken by the respondents/Bank pursuant to the said office memo is in accordance with the direction of the Government of India, which remains unchallenged.

24. As a result, for the reasons stated hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur